

IN SENATE OF THE UNITED STATES.

JUNE 21, 1848.

Submitted, and ordered to be printed.

Mr. BERRIEN made the following

REPORT:

[To accompany bill S. No. 238.]

The Committee on the Judiciary, to whom was referred the petition of James Chapman, administrator of Thomas Chapman, ask leave to submit the following report:

This claim has been heretofore submitted to Congress, and various reports have been made upon it. From these, the committee select the following report, made at the first session of the twenty-second Congress, which they adopt, and accordingly report a bill.

IN SENATE OF THE UNITED STATES.—April 24, 1832.

The Committee on the Judiciary, to whom was referred the petition of Thomas Chapman, report:

That the petitioner represents that he is the executor of Thomas Chapman, late of Georgetown, South Carolina, deceased.

“That the said Thomas Chapman was, in his life-time, collector of the customs for Georgetown district, in the State of South Carolina, and continued faithfully to discharge the duties of said office to the period of his death, which took place on the 28th day of November, Anno Domini 1820. That, some time in February, 1814, while the said Thomas Chapman was in the discharge of all the duties of his office, a certain Swedish brig, called the Diana, alleged to be in distress, and attempting to enter the port of Georgetown, was seized by Lieutenant Mark, of the United States cutter Boxer, and brought to anchor in said harbor, where the said Thomas Chapman visited her as collector, and put a revenue officer on board to take charge of the cargo. That the said brig was accordingly libelled, on the charge preferred against her by Lieutenant Mark, of a violation of the non-intercourse act, and her cargo condemned to be forfeited, which sentence of condemnation was, in February,

1818, finally confirmed by the Supreme Court of the United States. The said vessel's cargo having been condemned as aforesaid, the said Thomas Chapman was, by the laws of the United States, entitled, as collector, to one-fourth part of the net proceeds.

"That, while the said libel was pending before the court, the captain of the *Diana*, acting for the owners, thought proper to have the said Thomas Chapman examined as a witness in the cause; that his counsel accordingly prepared interrogatories, to which the district attorney put in cross-interrogatories, and transmitted the same in the commission, directed to certain gentlemen in Georgetown, requiring them to take the answers of the said Thomas Chapman thereto. Being thus called upon to testify, by a commission under the seal of the court, sanctioned as it seemed to be by the district attorney, the official adviser of all United States officers, the said Thomas Chapman did not suppose that any loss or damage could be incurred by him in consequence of his giving the evidence thus required of him. The said Thomas Chapman was not aware in doing this act, he was giving up any legal right whatever; he knew the district attorney too well to suspect that he would lead him into error, or that he would even suffer him, unadvisedly, to commit himself, and abandon his rights. The district attorney, indeed, subsequently declared that he had no idea at the time that the examination of said Thomas Chapman as a witness on the part of the owners, could jeopardize his claims, and even to the end, maintained the opinion that such was not the law. On hearing that the cargo had been finally condemned, the said Thomas Chapman caused a petition to be sent on to the court at Charleston, praying that his fourth part of the said cargo should be paid over to him according to law. On this petition being presented to the court by a legal friend of the said Thomas Chapman, the district attorney expressed his surprise, and stated that it was unnecessary to present such a petition, when the act directs expressly that one-half should be paid over to the collector for the use of himself and the United States. The legal co-partner of the district attorney, acting for him in his absence, had also declared that the district attorney was aware of the examination of the said Thomas Chapman, but that he had nothing to apprehend from it; and his right to a fourth of the condemned cargo was certain. Fortified by these opinions, and conscious that he had done nothing to merit a forfeiture, it was with great astonishment and mortification that the said Thomas Chapman was finally informed that his honor Judge Johnson had, on the second day of July, decided that he, the said Thomas Chapman, had forfeited his fourth part of the proceeds, and that he had ordered the same to be paid into the Branch Bank of the United States, to the credit of the government, which was accordingly done. The ground of this decision was, that the said Thomas Chapman had forfeited his proportion on account of his having been examined as a witness in the cause. By this decision, the United States has received into its treasury the sum of \$13,457 55, which had justly belonged to the said Thomas Chapman, on the alleged ground that he had, by his own act, forfeited his right to it.

“That this decision operated with peculiar hardship on the said Thomas Chapman. He had been induced, between six and seven years before, to accept the appointment of collector of the port of Georgetown, under the belief that the emoluments would afford compensation for the strict attention to his duties. In this expectation, he was greatly disappointed; and though he continued most assiduously and faithfully to perform his duties as collector to the day of his death, the pecuniary compensation he received was very inconsiderable. That he nevertheless continued to hold his commission, in the hope that the time might arrive when he would be rewarded for his devotion to the interests of the government. That his proportion of the forfeited cargo of the *Diana* afforded, for the first time, the prospect of some remuneration for years of faithful service; when, unexpectedly, this was torn from him by the government for an offence which he had unconsciously committed, which consisted in his stating the truth, upon oath, when required by a writ under the seal of the court, and when his conduct was sanctioned by the district attorney, and when no idea of forfeiture existed in the minds of any of the parties.”

The petitioner, therefore, prays that the sum of \$13,457 55, being Thomas Chapman's proportion of the cargo of the *Diana*, which has been paid into the treasury of the United States, may be restored to the family of the deceased.

The committee have examined the documents submitted in support of the claim thus set up by the petitioner, and have looked into the proceedings of the court, and find all the material allegations of the petitioner fully sustained by the testimony advanced. It appears from the record now on file in the office of the clerk of the Supreme Court, and from the documents now in the hands of the committee, that the ship *Diana*, when about to put into the harbor of Georgetown in a state of distress, was seized in crossing the bar, by Lieutenant Mark, of the United States cutter *Boxer*, on a charge of a violation of the non-intercourse act, on which charge she was libelled and condemned. That so soon as Thomas Chapman, the petitioner's testator, then collector of said port, heard of the seizure, he put an officer on board, and kept him there until the cargo was landed and disposed of according to the order of the court. That when the said cause was about to be tried in the federal district court at Charleston, the counsel for the claimants proposed to examine the said Thomas Chapman, in commission, as to the condition of the vessel on her arrival at the port of Georgetown, for the purpose of showing that she was actually in a state of distress. The district attorney, (the late Thomas Parker, esq., a gentleman of great legal learning, and of high reputation as a sound lawyer,) being of opinion, after a careful inspection of the law, that the examination of the said Chapman, as a witness on the part of the claimants, would not effect his claim, as collector, to a fourth part of the proceeds, in the event of the condemnation of the vessel or cargo, consented to put in cross interrogatories, and he was accordingly examined as a witness, and his testimony was read at the trial. The vessel was acquitted, but the cargo was con-

demned, and, on the application of the collector for his fourth part of the proceeds, amounting to \$13,457 55, the court, the Hon. Judge Johnson presiding, made the following decretal order, viz:

"One half goes to the United States necessarily, and the remaining fourth will also go to the United States in consequence of the collector's having been sworn as a witness; but it will go encumbered with whatever charges it would have been liable to in the hands of the collector." In consequence of this decision, there was paid into the treasury of the United States, the sum of \$30,203 77, including the above sum of \$13,457 55, being the fourth part of the collector, decreed to be forfeited as aforesaid. It appears from the statement of the late John Gadsden, esquire, the successor of Mr. Parker as district attorney, that, after the decree of condemnation was rendered in the case of the *Diana*, he was requested by Mr. Chapman "to submit the question to the circuit court, whether he had been deprived of his share of the penalty by being examined on the part of the claimants, &c.; that, upon inquiry, he ascertained that the then district attorney (Mr. Parker) considered Mr. Chapman as entitled to the penalty, and would have permitted him to receive it; that he, (Mr. Gadsden,) would not therefore make any question in the case, until he had again consulted Mr. Chapman, who positively directed him to bring the matter before the court; that he therefore brought the subject to the view of the circuit judge, and endeavored to show that the evidence given, being against and not for the penalty, did not establish any such intent as was contemplated by the act. The judge, however, was of a different opinion, though he seemed to regret that this was the legal conclusion, and intimated that it might be proper for the collector to apply to the general government." Mr. Gadsden adds, "that the determination to submit the matter to the court did not arise from any doubt about his rights, (being much disappointed at the decision, but from his great scrupulosity and integrity.) [Mr. Gadsden's statement is hereto annexed.] On this decision being made, Mr. Chapman presented a petition to Congress, praying that his portion of the cargo of the *Diana*, which was paid into the treasury, might be restored to him; and several petitions to the same effect, have, since his death, been presented to both Houses of Congress; but, so far, without success. Reports [which are annexed] having heretofore been made, adverse to the claim, the first question which arises in this case, is, whether the examination of Thomas Chapman as a witness for the claimants, did, in law, create a forfeiture of his portion of the proceeds of the *Diana's* cargo; and, if so, whether, under all the circumstances of the case, he was not equitably entitled to be relieved from the forfeiture? The following are the provisions of the act of Congress on which the decision of the court in the case was founded:

"*And be it further enacted*, That all fines, penalties, and forfeitures recovered by virtue of this act, (and not otherwise appropriated,) shall, after deducting all proper costs and charges, be disposed of as follows: one moiety shall be for the use of the United States, and be paid into the treasury thereof, by the collector re-

ceiving the same; the other moiety shall be divided between, and paid in equal proportions to the collector and naval officers of the district, and surveyor of the port, wherein the same shall have been incurred, or to such of the said officers as there may be in the said district; and in the districts where only one of the aforesaid officers shall have been established, the said moiety shall be given to such officer: *Provided, nevertheless,* That in all cases where such penalties, fines, and forfeitures shall be recovered, in pursuance of information given to such collector, by any person other than the naval officer or surveyor of the district, the one half of such moiety shall be given to such informer, and the remainder thereof shall be disposed of between the collector, naval officer, and surveyor or surveyors, in manner aforesaid: *Provided, also,* That where any forfeitures, fines, and penalties incurred by virtue of this act, are recovered in consequence of any information given by any officer of a revenue cutter, they shall, after deducting all proper costs and charges, be disposed of as follows: one-fourth part shall be for the use of the United States, and paid into the treasury thereof, in manner as before directed; one-fourth part for the officers of the customs, to be distributed as hereinbefore set forth; and the remainder thereof to the officers of such cutter, to be divided among them agreeably to their pay: *And provided likewise,* That, whenever a seizure, condemnation, and sale of goods, wares, or merchandise, shall take place within the United States, and the value thereof shall be less than two hundred and fifty dollars, that part of the forfeiture which accrues to the United States, or so much thereof, as may be necessary, shall be applied to the payment of the cost of prosecution: *And be it further provided,* That if any officer or other person entitled to a part or share of any of the fines, penalties, or forfeitures incurred in virtue of this act, shall be necessary as a witness on the trial, "for such fine, penalty, or forfeiture," such officer or other person may be a witness upon the said trial; but, in such case, he shall not receive nor be entitled to any part or share of the said fine, penalty, or forfeiture; and the part or share to which he otherwise would have been entitled, shall revert to the United States."

Now, on examining the provisions of this law it does appear to the committee to be extremely questionable whether they embrace the case of Thomas Chapman. The express provision of the first part of the section, is, "that one moiety of all fines, penalties, and forfeitures, &c., shall be divided between, and paid in equal proportions, to the collector and naval officers of the district and surveyor of the port wherein the same shall have been incurred, or to such of the said officers as there may be in the said district; and in the districts where only one of the aforesaid officers shall have been established, the said moiety shall be given to such officer;" and, in the last *proviso*, it is declared, "that, if any officer or other person entitled to a part or share of any of the fines, penalties, or forfeitures incurred in virtue of this act, shall be necessary as a witness on the trial "for such fine, penalty, or forfeiture," such officer or other person may be a witness upon the trial; but, in such case, he shall not receive, or be entitled to, any part or share

of the said fine, penalty, or forfeiture; and the part, or share, to which he otherwise would have been entitled, shall revert to the United States." Now, without putting any reliance on the expression that, if any of these officers "shall be necessary as a witness on the trial for such fine, penalty, or forfeiture," &c., (terms which would seem to imply that the testimony contemplated, was that which might be necessary to establish the forfeiture,) it seems, manifestly, to your committee, to have been the plain intent and meaning of the act, to provide against the creation of a forfeiture by the testimony of an interested witness. An officer, therefore, called upon by a claimant to swear against his interest, can hardly be considered as coming within the spirit of the act. It is true that the judge of the circuit court decided otherwise; but, as no reasons were assigned for that decision, which was given, as it appears, without full discussion, the counsel having submitted the case almost without argument; and, as no appeal was made to the Supreme Court, the committee are not disposed to consider the legal question contained in the case as finally and conclusively settled. Whatever view, however, may be taken of the mere legal point, the committee cannot doubt that, according to the spirit of the law, and the justice of the case, the collector should not be considered as having incurred a forfeiture in this case. His right, under the law, was clear; and, if he forfeited that right, it was by an act ignorantly and innocently committed. If he has fallen into error, he has been led into it by the district attorney, the law officer of the United States, to whose mind the question was presented, and who only consented to suffer the collector to be examined as a witness, after satisfying himself that, by such examination, he would incur no forfeiture. The statement of Robert Benthams, esquire, (hereto annexed,) the co-partner of the then district attorney, (who died shortly after,) explains the matter fully and satisfactorily. The question, in this aspect of the case, then, is, whether the mere mistake as to the legal effect of the examination of the collector, committed by the counsel, shall be suffered to deprive him of his legal rights, and to transfer them to the United States?

It appears to the committee that Mr. Chapman might well have been excused for falling into an error on this subject, (if it was one,) when the district attorney, to whom he had a right to look up for advice and protection, a man, too, of great eminence in his profession, was not aware of that error. In this point of view, and on this single ground, the committee would be well satisfied that the government ought not retain and convert to its own use a large sum of money forfeited under such circumstances. The committee are aware that, in the adverse reports hereto annexed, the ground is taken of a want of merit on the part of this claimant, which, in the opinion of those who made these reports, deprived him of any just claim on the liberality of Congress. But, on examining these reports, and comparing them with the facts as presented in the case, it will appear that there are some misapprehensions both as to the law and the facts, which it becomes necessary here to correct. It is intimated that, as the *Diana* was

seized and libelled by Lieutenant Mark, and not by the collector, the latter was negligent in the performance of his duty; and, having given evidence in favor of the claimants, and not of the United States, he can have no just claim for any part of the forfeiture, which was intended only to reward those who are "instrumental in detecting frauds." Now, the law does not require that the seizure should be made by the collector, in order to entitle him to a portion of the forfeiture. In all cases of fines, penalties and forfeitures, for the violation of the revenue laws, he is entitled to his share, whether he is the informer or not. It may be true that this addition to the stated compensation of the collector is intended to excite general vigilance in the performance of his duties; and it will, doubtless, be found a sufficient stimulus for that purpose. But the claim for a share of the forfeiture, in any particular case, is not made dependent on the conduct of the officer in that case. There does not appear to be any just ground, however, even for a suspicion of any neglect of duty on the part of the collector in this case; and, when it is considered that he had an interest in the condemnation of the cargo, to upwards of \$13,000, a sum, probably, greatly exceeding all the compensation ever received by him for many years' service as collector of the port of Georgetown, it can hardly be conceived that he could have been guilty of wilful neglect in prosecuting such a claim. But the truth is, that the *Diana* was seized by Lieutenant Mark immediately after crossing the bar of Georgetown, and the collector was never called upon, or required, by the duties of his office, to do more than visit the vessel immediately on her arrival in the harbor, and to put a custom-house officer on board, which was done. [See the statement of L. Joseph, annexed.]

It is true that the collector did testify that the *Diana* appeared to be in distress, on her arrival in the harbor of Georgetown, and this is the sum and substance of his testimony, which so far proved only what was fully established by the other witnesses. The decree of the circuit court, (which is also annexed,) shows that the vessel actually was in distress, and that the cargo was condemned, after a thorough examination, on facts disclosed, for the first time, at the trial, and which could not possibly be known to the collector. From the annexed certificate from the friends and neighbors of Mr. Chapman, as well as from other information received by the committee, they are perfectly satisfied that he was a very worthy, pious, and most scrupulous man, who, throughout the whole of this affair, as on every other occasion of his life, acted in a faithful and conscientious manner. His conduct, as detailed by Mr. Gadsden, offers a striking illustration of this. Though the district attorney made no objection, and, indeed, was ready to give his consent to Mr. Chapman's receiving his portion of the forfeiture in this case, and though advised by his own counsel that no application to the court was necessary, yet, having heard it doubted whether he had not forfeited his claim, so great was "his scrupulosity and integrity," that he insisted that the question should be submitted to the judge. The committee would be slow to believe

that a man, acting on such elevated principles, could have been guilty of any neglect of duty, and they can find nothing in the testimony to justify the suspicion.

On the whole case, the committee are of opinion that it must be considered as doubtful whether, according to the strictest construction of the law, Thomas Chapman did actually incur a forfeiture in this case; but, if such forfeiture was incurred, it being clear that it was incurred innocently, and that he was misled by the opinion of the district attorney, it does not become the United States to take advantage of that mistake, by converting to their own use a sum of money which rightfully belonged to one of their officers, who is proved to have served them for many years with the utmost fidelity. Influenced by these views, the committee report a bill for the relief of the legal representative of Thomas Chapman, deceased, late collector of the port of Georgetown, in the State of South Carolina.

IN SENATE U. S., DECEMBER 8, 1818.

The committee, to whom was referred the petition of Thomas Chapman, collector of the customs for Georgetown district, in the State of South Carolina, report:

That, in February, 1814, the collector was called on by the captain and supercargo of the brig Diana, a Swedish vessel, then at anchor without the bar, who represented that they were in great distress for want of provisions and water, and requested information whether the brig could enter the port, for the purpose of obtaining a supply, without paying tonnage and light money, and what steps they should take. That, upon obtaining the desired information, they returned to the brig, with the intention to bring her into port.

That, soon after entering the port, she was boarded by Lieut. Mark, of the United States cutter Boxer, who, from circumstances, deemed it necessary to detain vessel and papers, and gave immediate notice thereof to your petitioner. Upon which, your petitioner sent an inspector on board, with a view of preventing injury to the revenue; and when the vessel was brought up by Lieut. Mark, and anchored in Wenyaw bay, your petitioner likewise went on board, at which time the cargo was in a state of confusion, owing, as was represented, to the leaks in the deck.

Legal process was issued, at the instance of Lieut. Mark, against the brig, and the vessel and cargo were libelled. The collector was examined on interrogatories and cross-interrogatories, under a commission from the court, without knowing, as he says, under what law the vessel and cargo were libelled, and without knowing that his examination could be prejudicial to his interest. That, upon trial of the cause in Charleston, the vessel was acquitted, and

cargo condemned; and, upon appeal made to the Supreme Court, the cargo was finally condemned in February last.

The collector not receiving his moiety of the proceeds of the condemned cargo, to which he thought himself entitled, made application to the court, by petition, for his proportion of the forfeiture in the case; and it was decided by the court, Justice Johnson presiding, that, in consequence of the collector being a witness in the case, his proportion, amounting to \$13,457 55, accrued to the United States. The prayer of the petitioner is to obtain from Congress what had been denied him by the court.

The act of Congress to regulate the collection of duties on imports and tonnage, section 91, passed in 1799, is conclusive against the petitioner's claim; and your committee do not deem it advisable to break in upon long established principles and usages, unless the claim to an exception is better founded in equity than the present application. The committee, therefore, submit the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

IN SENATE U. S., DECEMBER 20, 1827.

The Committee on Naval Affairs, to whom was referred the petition of Thomas Chapman, collector of the customs for the district of Georgetown, in the State of South Carolina, have had the same under consideration, and report:

The petitioner states that, in the month of February, 1814, he, as collector aforesaid, was called on by the captain and supercargo of the brig *Diana*, a Swedish vessel, then lying without the bar, to know if the vessel might enter the port without paying tonnage and light money, they being in great distress; and, after obtaining the necessary information, the vessel was brought into port. Soon after her arrival, she was boarded by Lieutenant Mark, commanding United States cutter *Boxer*, who, from circumstances, suspected that attempts had been, and were making, to smuggle the cargo, and called the attention of the petitioner, as collector, to the subject. The petitioner went on board himself, and also sent an inspector, with a view of preventing injury to the revenue. From all the circumstances of the case, the petitioner did not think the evidence of improper conduct such, on the part of the said vessel, as to justify the issuing of legal process against her for a breach of the revenue laws. The petitioner further states, that, at the instance of Lieutenant Mark, commander of the cutter, the said vessel was libelled for such breach of the laws, and was condemned before the proper court; the petitioner having been called on as a witness on the part of the Swedish claimants of the property, gave testimony accordingly. That the vessel was acquitted on the trial in Charleston, but the cargo condemned. That an appeal was taken

to the Supreme Court, where the decision of the court below was finally affirmed. That, in apportioning the proceeds of the condemned cargo among the persons entitled to receive it under the acts of Congress on this subject, the part of the collector was one-fourth, but the court determined that your petitioner, the collector, having been examined as a witness in the cause, was expressly excluded by the words of the statute, which opinion was confirmed by the Supreme Court. The petitioner states a number of reasons which, in his opinion, will justify Congress in giving to him that portion of the condemned property to which, under certain circumstances, he would have been entitled, and finally prays the passage of a law granting the amount to him.

The committee, having attentively considered the circumstances of this case, are unable to discover any thing which would justify Congress in making any change of that disposition of the property which has been made by the courts through which this case has passed. It was there investigated fully, no doubt, by able counsel on both sides, as the sum of thirteen thousand dollars was depending on the issue, and finally decided before tribunals fully competent to give correct decisions. That part of the forfeiture of property condemned for the violation of the revenue laws, which is given to the officers who are instrumental in detecting frauds attempted to be practised, was undoubtedly intended to excite those officers to vigilance in frustrating such attempts, and bringing to justice the perpetrators thereof. But the petitioner, so far from having been instrumental in the condemnation of the *Diana*, appears, from his own showing, to have been ignorant of the law under which the proceedings were carried on, took no part whatever in the prosecution, indeed refused to take a part, and was examined as a witness on the opposite side of the question. Considering all the circumstances of this case, the committee recommend to the Senate the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

Certificate of John Gadsden.

In the case of the *Diana*, the collector of Georgetown directed me to submit the question to the circuit court, whether he had been deprived of his share of the penalty by being examined on the part of the claimants, and giving testimony in their favor. Upon inquiry, I ascertained that the district attorney considered Mr. Chapman entitled to the penalty, and would have permitted him to receive it; and I therefore would not make any question in the case, until I had again consulted Mr. Chapman, who positively directed me to bring the matter before the court. I therefore brought the subject to the view of the circuit judge, and endeavored to show that the evidence given, being against and not for the penalty, did not establish any such interest as was contemplated by the act.

The judge, however, was of a different opinion, though he seemed to regret, I think, that this was the legal conclusion, and intimated that it might be proper for the collector to apply to the general government. I would observe that Mr. Chapman's determination to submit the matter to the court did not arise from his having any doubt about his rights, (being much disappointed at the decision,) but from his great scrupulosity and integrity.

JOHN GADSDEN.

DECEMBER 16, 1822.

True copy:

WM. THOS. CARROLL.

Certificate of Robert Bentham.

I certify that, some time prior to March, 1814, I entered into copartnership with the late Thomas Parker, district attorney for South Carolina, and continued in copartnership with him to the day of his death; that I was well acquainted with his business generally, and particularly with that portion of it which concerned his office of district attorney; that, on the 5th March, 1814, he filed a libel in behalf of the United States, against the brig Diana and cargo, (a Swedish vessel which had put into the port of Georgetown, on the plea of distress,) and that said vessel and cargo were finally condemned for an attempt to import goods into the United States contrary to our laws; that, in the progress of said suit, the claimants applied through their Attorney, Keating L. Simons, esquire, to take the examination of Thomas Chapman, the collector of Georgetown, by commission, on the part of the claimants. Mr. Parker, on looking into the law, was of opinion that the collector would not forfeit his share of the vessel and cargo, unless examined in support of the libel, and he therefore consented to join in the commission for the examination of the collector. A commission was issued accordingly, under the seal of the court, by which the said collector was required to state, on the part of the claimants, the facts and circumstances in relation to the condition of the vessel on her arrival at Georgetown, which went to show that she was actually in distress, and was therefore not liable to condemnation. The examination of the collector on the points did tend to prove that the vessel was in distress, but it was rebutted by other evidence drawn from other sources, which proved an intention, at the very inception of the voyage, to bring the goods into the United States. On the cargo being condemned, the collector claimed his portion of the forfeiture; but Judge Johnson was of opinion, (contrary to the opinion of the district attorney,) that the law created a forfeiture of a claim whether he was examined in favor of or against his interests. I further certify, that, throughout the whole transaction, no imputation of improper conduct was attributed to the collector, and it was certainly the wish of the dis-

trict attorney that he should have received his proportion of the proceeds.

ROBERT BENTHAM.

CHARLESTON, 16th December, 1822.

True copy:

WM. THOS. CARROLL.

No. 5.

Lizar Joseph's affidavit.

STATE OF SOUTH CAROLINA, *District of Georgetown:*

Personally appeared before me, Lizar Joseph, for many years employed by the collectors of this district and port as inspector, &c., who, being duly sworn, depose that Thomas Chapman, deceased, did, in pursuance of his duty as collector of this port, take possession of, and put on board the Swedish brig Diana, immediately upon her arrival in his district under charge of the revenue cutter, John Lewis Poyas, as inspector, and there continued him until the said brig was about discharging her cargo, when he, the said deponent, as he further sweareth, took charge and superintended the unlading of the said brig, having been, till then, unable to undertake the said charge. And the said deponent further saith, that the late Thomas Chapman was not in that, or any other case, guilty of any neglect of duty; but always discharged it in an upright and exemplary manner. And he saith further, that the said Thomas Chapman, deceased, late collector of this port, was improperly and unjustly made an evidence in the trial of the aforesaid Swedish brig Diana, believing, as he most conscientiously does, his testimony was taken through the mistaken cunning of Lieutenant Mark of the said cutter, who, this deponent rests satisfied, supposed his own share of the cargo would be increased by causing the collector to forfeit his.

L. JOSEPH.

Sworn before me, this 8th day of January, 1822.

JACOB WAYNE, J. P.

No. 6.

Decree of the circuit court, and order for distribution of proceeds, wherein the collector's fourth is given over to the United States.

THE UNITED STATES OF AMERICA, } *In the circuit court.*
South Carolina district.

THE UNITED STATES, } *Decree of forfeiture. Appeal*
vs. } *from district court.*
 THE BRIG DIANA AND HER CARGO. }

THURSDAY, the 1st of December, 1814.

Present: His honor William Johnson.

Decree.—At the hearing of this cause I was very much inclined to think favorably of it. I am satisfied that the Diana was not the vessel seen hovering on the coast to the north of Georgetown; that her state of distress was real and not fictitious; that the damaged state of her cargo was a sufficient reason for opening and airing the articles found between decks, and that the necessity of disguising English articles in order to introduce them into the ports of the continent, during the time of the exclusion of English goods, may have been the cause of the disguise put upon this cargo; but still the case may come strictly within the words of our statute. The goods, excepting the iron and steel, were unquestionably of British origin, and, although neutral property, and from a neutral port, if shipped for a port of these States, the forfeiture attaches. The only question then is, whether the destination to Amelia was real or colorable? It has been contended that, although real, and with an intention to close the voyage there, yet, as the goods were clearly intended for the southern market, and it is well known that everything landed in Amelia is intended to be brought surreptitiously or otherwise into the United States, that the forfeiture ought even in that case to attach. I am well convinced that there is a great deal of truth in this argument, and experience has taught us that shipments to Amelia are but evasions of our restrictive laws, but the difficulty of confining the application of such reasoning within practical limits would render it improper to adopt it. A shipment to the Cape of Good Hope for the like purposes, if that place presented facilities for the introduction of prohibited articles, would be equally within the scope of this argument, such an extension of the restrictive system might have been made a provision of positive law, but could not be adopted by this court without it. But the destination to Amelia in this case could not have been intended to evade our laws. The disguise which the goods had assumed rendered such evasion unnecessary. The real avowed market for the goods was an American port, and the destination to Amelia could only be to avoid capture by our enemy. It is true the letter of instructions, and the oath of the supercargo, make out Amelia to be the real and primary place of destination. But it is

a remarkable fact, that both the letter of instructions, and the oath of the supercargo, make out a voyage not sanctioned by the charter party. The charter party authorizes the destination to Amelia only in case our ports from Cape Hatteras, southwardly, should be "found in a state of blockade," and giving no permission to sail from thence to an American port. But the letter of instructions make Amelia the primary destination, the bills of lading are to Amelia and a market, and the destination to the United States only in case, upon Mitchelsen's arrival at Amelia, he shall find "any port of the United States where he can obtain a return cargo unblockaded," then not even confining himself to the limits of the capes of Virginia. Hence, I conclude that the destination to Amelia was only ultimate or colorable, to evade capture, and that the real voyage was that described in the charter party; that, by securing to herself the run from the capes of Virginia to Amelia, the vessel was intended to avail herself of the double chance of either finding a port unblockaded, or evading the blockade, and her real primary object was the market to be found in a port of the United States. In this view, I must consider this case as coming within the description of a shipment to a port of the United States, and confirm the decree of the district court condemning the cargo. As there is no evidence that the captain or owner were privy to the fact that the goods were of British origin, the vessel must be acquitted.

Extract from his honor Judge W. Johnson's order made in relation to the distribution of the proceeds.

"One-half goes to the United States necessarily, and the remaining fourth will also go to the United States, in consequence of the collector having been sworn as a witness; but it will go encumbered with whatever charges it would have been liable to in the hands of the collector."

I, James Jervey, district clerk for South Carolina district, do certify that the foregoing is a just and true copy of the decree pronounced in the circuit court in the case of the United States *vs.* the brig Diana and cargo; and the above extract is from the order of Judge Johnson relative to the distribution of the proceeds, all which proceedings are of record in my office, in the aforesaid case.

In testimony whereof, I have affixed the seal of the said court at Charleston, this eighteenth day of December, Anno Domini 1822, and in the forty-seventh year of the independence of the United States of America.

JAMES JERVEY, [L. s.]
District Clerk.

No. 7.

Certificate of the people of Georgetown of the integrity of the collector, and his correct administration.

We do hereby certify that the late Thomas Chapman, collector of the customs for the port of Georgetown, in South Carolina, was a gentleman of great worth and respectability; that, through a long life, he was distinguished for integrity, and many amiable and excellent qualities; that he fulfilled the duties of collector in the most honorable, zealous, and exemplary manner, and as a public officer no one could be entitled to higher praise. His compensation as collector was very small, and, in our opinion, a very inadequate remuneration for faithful services to the government. He left, at his death, a family of seven children, and a very small property. It would afford sincere satisfaction to us, and to the people of this district in general, if Thomas Chapman's share of the Diana and her cargo could be restored to his family. We are perfectly satisfied that his conduct in that transaction was entirely praiseworthy.

Moses Fort
Jno. Keith
Robert Herriot
Isaac Carr
Robert Andrew Taylor
Wm. W. Trapier
John A. Keith
John M. Taylor
B. F. Wassill
John B. Shackelford
John Taylor, jr.
Theodore Gourdin, M. D.
Thomas L. Shaw
A. Marvin
Jo. W. Auston
Benjamin Huger
F. K. Huger
Peter Cuttino
Henry Cuttino
Thomas F. Goddard
Legrand G. Walker
Jas. C. Coggeshall
Richard Shackelford
Eleazer Waterman
Thomas Henning
Anthony B. Shackelford
Benjamin King
H. Denison
Geo. W. Heriot
Benjamin S. Cuttino

Saml. Smith
William Allston, M. D.
Hugh Fraser
Dh. Potter
James Smith
Jacob Wayne
Robert Thurston
Benjamin Green, jr.
Robert Cooper
Thomas Carr
Jacob Cohen
Robert F. Withers
Charles Munnerlyn
Francis Withers
Charles Huggins
Robert Cotten
John Wragg
Jacob Myers
Solo. Cohen
L. Myers
Jas. M. Grier
Wm. Denison
Rob. Withers
Th. B. Thomas
W. Alston
George S. Smith
J. Shackelford
Francis Green
W. A. Bull
Saml. Wragg

